

# Notice of Allowability

## Application No.

09/866,379

## Examiner

Delia M. Ramirez

## Applicant(s)

SHORT ET AL.

## Art Unit

1652

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/13/2004.
2. ☒ The allowed claim(s) is/are 60-64 and 91-106.
3. ☒ The drawings filed on 04 September 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 9/13/02 - 2/20/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

**DETAILED ACTION**

***Status of the Application***

Claims 60-64 and 91-106 are pending.

Amendment of claims 60-61, 91-92, and cancellation of claims 107-112 in a communication filed on 4/13/2004 is acknowledged.

In a telephone conversation with Gregory Einhorn on 5/10/2004, an agreement was reached to amend claims 92 to place the application in condition for allowance.

***Examiner's Amendment***

1. An informal Examiner's amendment to the specification appears below. This amendment is to update the current status of prior applications to which priority is claimed.

2. Please enter the following amendments to the specification as follows:

3. In page 1, please replace paragraph [001] with the following paragraph:

This application is a continuation-in-part of U.S. Patent Application Serial No. 09/580,515, filed May 25, 2000, now U.S. Patent No. 6,720,014, which is a continuation-in-part of U.S. Patent Application Serial No. 09/318,528, now U.S. Patent No. 6,183,740, filed May 25, 1999, which is a continuation-in-part of U.S. Patent Application Serial No. 09/291,931, now U.S. Patent No. 6,190,897, filed April 13, 1999, which is a continuation of U.S. Patent Application Serial No. 09/259,214, now U.S. Patent No. 6,110,719, filed March 1, 1999, which is a divisional of U.S. Patent Application Serial No. 08/910,798, now U.S. Patent No. 5,876,997, filed August 13, 1997, all of which are hereby incorporated by reference in their entirety.

4. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Art Unit: 1652

5. Authorization for this Examiner's amendment was given in a telephone interview with Gregory Einhorn on 5/10/2004.

6. Please replace claim 92 as follows:

92. The method of claim 91, wherein the recombinant expression system further comprises a host cell.

*Reasons for Allowance*

7. The following is an Examiner's statement of reasons for allowance. Although the prior art discloses improving the nutritional value of phytate-containing foodstuff with phytases, the Examiner has found no teaching or suggestion in the prior art directed to a method for improving the nutritional value of phytate-containing foodstuff with the phytase of SEQ ID NO: 10 or a phytase encoded by the polynucleotide of SEQ ID NO: 7 with the substitutions recited in claim 61. Therefore, claims 60-64 and 91-106 directed to a method for improving the nutritional value of phytate-containing foodstuff with the phytase of SEQ ID NO: 10 or a phytase encoded by the polynucleotide of SEQ ID NO: 7 having the recited substitutions are allowable over the prior art of record.

8. Claims 60-64 and 91-106 are allowed.

9. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or

Application/Control Number: 09/866,379

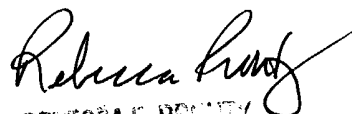
Page 4

Art Unit: 1652

relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

Delia M. Ramirez, Ph.D.  
Patent Examiner  
Art Unit 1652

DR  
May 10, 2004

  
REBECCA E. PRIORITY  
PRIMARY EXAMINER  
GROUP 1800  
16 70